

PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

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HB 5638

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The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

The State Bar does not have a position in this matter.

The total membership of the Probate & Estate Planning Section is 3,769.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 22. The number who voted in favor to this position was 15. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

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Bill Number:

[HB 5638](#) (Lucido) Probate; wills and estates; exempt property; allow decedent to exclude adult child by written instrument. Amends sec. 2404 of [1998 PA 386](#) (MCL [700.2404](#)).

Date position was adopted:

September 10, 2016

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

22

Number who voted in favor and opposed to the position:

15 Voted for position

0 Voted against position

0 Abstained from vote

7 Did not vote (absent)

Position:

Support with Recommended Amendments

Explanation of the position, including any recommended amendments:

The Section supports HB 5638 with the proposed changes in the attachment.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2016-HB-5638>

[Recommended changes to HB 5638; Draft 2.]

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's 1 surviving spouse is also

2 entitled to household furniture, automobiles, furnishings,

3 appliances, and personal effects from the estate up to a value not

4 to exceed \$10,000.00 more than the amount of any security interests

5 to which the property is subject. If ~~EXCEPT AS OTHERWISE PROVIDED~~

~~6 — IN SUBSECTION (4), IF~~ there is no surviving spouse, the decedent's

7 children WHO ARE NOT EXCLUDED UNDER SUBSECTION 4 are entitled jointly to the same
value.

8 (2) If ~~EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF~~

9 encumbered assets are selected and the value in excess of security interests, plus that of 1 other exempt
property, is less than
2 \$10,000.00, or if there is not \$10,000.00 worth of exempt property
3 in the estate, the spouse or children **WHO ARE NOT EXCLUDED UNDER SUBSECTION 4** are
entitled to other assets
4 of the estate, if any, to the extent necessary to make up the
5 \$10,000.00 value. Rights to exempt property and assets needed to
6 make up a deficiency of exempt property have priority over all
7 claims against the estate, except that the right to assets to make
8 up a deficiency of exempt property abates as necessary to permit
9 payment of all of the following in the following order:
10 (a) Administration costs and expenses.
11 (b) Reasonable funeral and burial expenses.
12 (c) Homestead allowance.
13 (d) Family allowance.
14 (3) The rights under this section are in addition to a benefit
15 or share passing to the surviving spouse or children by the
16 decedent's will, unless otherwise provided, by intestate
17 succession, or by elective share. The \$10,000.00 amount expressed
18 DESCRIBED in this section ~~shall~~ MUST be adjusted as provided in
19 section 1210.

~~20 (1) A DECEDENT BY WILL OR OTHER SIGNED WRITING MAY EXPRESSLY
21 EXCLUDE OR LIMIT THE RIGHT OF A CHILD WHO IS NOT A MINOR OR
22 DEPENDENT CHILD TO MAKE A CLAIM THAT THE CHILD IS OTHERWISE
23 ENTITLED TO UNDER THIS SECTION. THE EXCLUSION OR LIMITATION
24 DESCRIBED IN THIS SUBSECTION MUST BE EXPRESSLY STATED BY THE
25 DECEDENT, AND MUST SPECIFICALLY REFERENCE THE ALLOWANCE DESCRIBED
26 IN THIS SECTION IN A MANNER SUFFICIENT TO EXPRESS THE DECEDENT'S
27 INTENT. AN EXCLUSION OR LIMITATION STATED BY A DECEDENT BY WILL UNDER SECTION
2101, WITHOUT 1 ADDITIONAL LANGUAGE SPECIFICALLY~~

~~2 STATING AN INTENT TO EXCLUDE OR LIMIT A RIGHT PROVIDED UNDER THIS~~
~~3 SECTION, IS NOT CONSIDERED SUFFICIENT LANGUAGE TO EXCLUDE OR LIMIT~~
~~4 A RIGHT PROVIDED IN THIS SECTION.~~

22 (4) THE DECEDENT MAY EXCLUDE 1 OR MORE CHILDREN FROM

23 RECEIVING THIS ALLOWANCE BY EITHER OF THE FOLLOWING MEANS:

26 (a) DECEDENT BY WILL EXPRESSLY STATES THAT THE CHILD TAKES NOTHING OR AN
27 AMOUNT OF \$10.00 OR LESS FROM THE ESTATE.

28 (b) DECEDENT BY WILL EXPRESSLY STATES THAT THE CHILD IS NOT TO RECEIVE AN
29 ALLOWANCE UNDER THIS SECTION.

30 Enacting section 1. This amendatory act takes effect 90 days

31 after the date it is enacted into law.